

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1060 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

AHER HIRA DANA

Versus

AHER KARSAN GOVIND

Appearance:

MR AJ SHASTRI for Petitioner

MR BY MANKAD for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 12/09/97

ORAL JUDGEMENT

1. Petitioner is the original plaintiff and respondents are the original defendants. The petitioner is aggrieved by the judgment and order dated 11th August, 1994 passed below Exhibit 33 by the learned Civil Judge, Junior Division, Jodiya, to the extent that the said order is adverse to petitioner - plaintiff. It appears that the petitioner plaintiff - Aher Hira Dana instituted

Regular Civil Suit No. 21 of 1994 in the court of Civil Judge, Junior Division, Dhrol (a link court with Jodiya also). In such suit, initially by making an application at Exhibit-5, he applied for temporary injunction, wherein the trial court initially granted ad interim injunction. The respondents - defendants appeared and filed their reply to the application at Exhibit 5 and both the parties produced the documents along with the list. The trial court thereafter proceeded to decide application at Exhibit 5 and vacated ad interim injunction which was initially granted.

2. It is thereafter that the petitioner plaintiff moved an application at Exhibit 33 to amend the plaint as well as application for temporary injunction Exhibit 5 which was already decided by the trial court. By such application at Exhibit 33, he, inter alia, averred that in good faith in the plaint as well as in the application for temporary injunction, he has missed to state in the relief clause, the area from which the water would be discharged. By amending the original plaint as well as application for temporary injunction in para-2 as well as in the schedule it was averred by him that through part of Survey No. 85 of the ownership of the plaintiff towards western shedha, there was a right to discharge the rain water through survey No. 80 of the ownership of the defendants to southern shedha. Such averment which was made in the application for temporary injunction as well as in the schedule, he wanted to amend by making averment that in Schedule-A from western shedha of survey No. 85 there was a right to discharge rain water from time immemorial through southern shedha of survey No. 80 of the ownership of the defendants. He further wanted to allege that such discharge from western shedha of survey No.85 of plaintiff towards southern shedha of survey No.80 of defendants was from the shedha corner further towards east in the measurement of about 10 feet width and from survey No. 85 of the ownership of plaintiff from 01 feet height of eastern shedha. The water passes through southern shedha of survey No. 80 of defendants and that amendment was required to be made both in the schedule to the plaint as well as in para 3-A of the plaint. Having so stated in the application, he further stated that in Schedule-A to the plaint as under:

He also wanted to amend para 3-B of the plaint by introducing following paragraph.

3. The various averments which he has sought by both in the plaint as well as in the application for temporary injunction by application at Exhibit 33 are most clumsily drafted and are the products of the very confused mind. However, in view of the fact that it was an application for amendment of the pleadings, the trial court by keeping the well established principle of law in mind, as stated in the case of L.J. LEACH AND CO. LTD v. MESSRS. JARDINE SKINNER AND CO., reported in AIR 1957 SC 357 and in the case of PIRGONDA HONGONDA PATIL v. KALGONDA SHIDGONDA PATIL, reported in AIR 1957 SC 363, granted the amendment of the plaint but did not accede to his request to amend the application for temporary injunction as the same was already finally decided. To amend such application of amendment by the application which was already decided would naturally give chance to the plaintiff to make out a totally different case for grant of temporary injunction and the one which was pleaded by him and which was not believed and ad interim injunction was vacated.

4. Mr. B.Y. Mankad, learned Counsel appearing for the respondents has submitted that in view of the amendment made in the plaint he can apply afresh by making an application for temporary injunction consistent with the amended plaint and the court may consider such application afresh after the defendants are provided opportunity of filing reply. Granting of application of amendment would necessarily result into rendering nugatory the order passed below Exhibit 5 by the trial court by refusing injunction in favour of the plaintiff. In that view of the matter, the order passed by the trial court partially granting application at Exhibit 33 for amending the plaint is upheld and it is open to the plaintiff to file fresh application for temporary injunction consistent with the amendment made in the plaint.

5. In the result, I do not find any substance in the present Civil Revision Application. The same is

dismissed. Rule is discharged. There shall be no order
as to costs.

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